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GENERAL

The Pennsylvania Legislature has passed an act[1] providing for the suspension of the duty to pay rent for dwellings certified as unfit for human habitation. The act, known as the Rent Withholding Law, provides *inter alia*:

> **Dwellings unfit for habitation**
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> *Notwithstanding any other provision of law or of any agreement*, whether oral or in writing, whenever the Department of Licenses and Inspections of any city of the first class, or the Department of Public Safety of any city

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1. An Act providing for the suspension of the duty to pay rent for dwellings certified to be unfit for human habitation in cities and providing for the withholding and disposition of shelter allowances. Act of Jan. 24, 1966, P.L. (1965) 1534, title *amended* June 11, 1968, P.L. , No. 89, § 1. PA. STAT. ANN. tit. 35, § 1700-1 (Supp. 1969) [hereinafter referred to as Pennsylvania's Rent Withholding Law].

of the second class, second class A, or third class, as the case may be, or any Public Health Department of any such city, or of the county in which such city is located, *certifies a dwelling as unfit for human habitation, the duty of any tenant of such dwelling to pay, and the right of the landlord to collect rent shall be suspended without affecting any other terms or conditions* of the landlord-tenant relationship until the dwelling is certified as fit for human habitation or until the tenancy is terminated for any reason other than nonpayment of rent. *During any period when the duty to pay rent is suspended, and the tenant continues to occupy the dwelling, the rent withheld shall be deposited* by the tenant *in an escrow account* in a bank or trust company approved by the city or county as the case may be and shall be paid to the landlord when the dwelling is certified as fit for human habitation at any time within six months from the date on which the dwelling was certified as unfit for human habitation. *If, at the end of six months after the certification of a dwelling as unfit for human habitation, such dwelling has not been certified as fit for human habitation, any moneys deposited in escrow on account of continued occupancy shall be payable to the depositor,* except that any funds deposited in escrow may be used, for the purpose of making such dwelling fit for human habitation and for the payment of utility services for which the landlord is obligated but which he refuses or is unable to pay. *No tenant shall be evicted for any reason whatsoever while rent is deposited in escrow.*[2]

The Pennsylvania Rent Withholding Law was enacted to cope with the "urban crisis"[3] by encouraging and promoting the

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2. PA. STAT. ANN. tit. 35, § 1700-1 (Supp. 1969) (emphasis added).

3. A description of the underlying background behind the "urban crisis" was accurately made in the *Report of the National Advisory Commission on Civil Disorders*, U.S. Gov't Printing Office 0-291-729 at 147 (1968), where it is stated that:

> The racial disorders of last summer in part reflect the failure of all levels of government—Federal and state as well as local—to come to grips with the problems of our cities. The ghetto symbolizes the dilemma: a widening gap between human needs and public resources and a growing cynicism regarding the commitment of community institutions and leadership to meet these needs.
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> The problem has many dimensions—financial, political and institutional. Almost all cities—and particularly the central cities of the largest metropolitan regions—are simply unable to meet the growing need for public services and facilities with traditional sources of municipal revenue. Many cities are structured politically so that great numbers of citizens—particularly minority groups—have little or no representation in the processes of government. Finally, some cities lack either the will or the capacity to use effectively the resources that are available to them.
>
> Instrumentalities of Federal and state Government often compound the problems. National policy expressed through a very large number of grant programs and institutions rarely exhibits a coherent and consistent perspective when viewed at the local level. State efforts, traditionally focused on rural areas, often fail to tie in effectively with either local or Federal programs in urban areas.
>
> Meanwhile, the decay of the central city continues—its revenue base eroded by the retreat of industry and white middle-class

rehabilitation of substandard or unfit housing, thereby checking the deterioration of slum property prior to its reaching the point where demolition is necessary. The provision prohibiting eviction while rent is deposited in escrow was included to protect tenants who avail themselves of the procedure provided by the act. The act is particularly effective against absentee owners who are beyond the jurisdiction of local magistrates and who, therefore, cannot be prosecuted for violations of local housing laws.[4]

It has been said that the Pennsylvania Rent Withholding Law is penal in nature; if the landlord is not encouraged to repair the cited violations, he is penalized by forfeiting his rent for a six month period.[5] The law is made even more stringent by the requirement that all the cited violations must be repaired before the property can be certified as fit for human habitation and the landlord can become entitled to the rent escrow monies.

The power of a governmental body to regulate landlord-tenant matters and to prohibit the eviction of tenants under limited circumstances is constitutionally permissible.[6] Such regulation is not a novel concept. Legislation similar to Pennsylvania's Rent Withholding Law was enacted in New York in 1920 and upheld as constitutional in 1922.[7] The District of Columbia passed a rent

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families to the suburbs, its budget and tax rate inflated by rising costs and increasing numbers of dependent citizens and its public plant schools, hospitals and correctional institutions deteriorated by age and long deferred maintenance.

Yet to most citizens, the decay remains largely invisible. Only their tax bills and the headlines about crime or "riots" suggest that something may be seriously wrong in the city.

There are, however, two groups of people that live constantly with the problem of the city: the public officials and the poor, particularly the residents of the racial ghetto. Their relationship is a key factor in the development of conditions underlying civil disorders.

4. Pa. R. Crim. P. 105, 107, 111 (Supp. 1969). The City of Pittsburgh Housing Court follows the Pennsylvania Rules of Criminal Procedure which provide for service of summons by registered mail if personal service cannot be made. However, the individual must come within the jurisdiction to be arrested.

5. *See* National Council of Mechanics v. Roberson, 214 Pa. Super. 9, 248 A.2d 861 (1969) where the court said, ". . . statutes of this kind are penal, in that they deprive the landlord of rights he would otherwise be entitled to have enforced. . . ." *Id.* at 18, 248 A.2d at 866.

6. Brown v. Feldman, 256 U.S. 170 (1921). This case involved New York legislation prohibiting recovery of possession of real property. The objection was that the act impaired a contractual obligation to surrender possession. The court held that such contracts are made subject to the exercise of the power of the state when justified. The justification given was ". . . a very pressing want of shelter in certain crowded centers." *Id.* at 199.

7. Levy Leasing Co. v. Siegal, 258 U.S. 242 (1922).

control act in 1940 which was challenged and upheld in 1949 as a constitutional exercise of the police power.[8] Federal legislation regulating the rights and duties of landlords was enacted by the Emergency Price Control Act of 1942[9] and the subsequent Housing and Rent Act of 1947.[10] Both acts were upheld as constitutional exercises of the war powers.[11]

The Pennsylvania Supreme Court has deemed the existence of an emergency relating to housing accommodations a prerequisite to the upholding of rent control legislation as an exercise of the police power.[12] It can be argued, however, that a shortage of housing and the resulting inflation in the rental market create the necessary emergency for rent control legislation.[13] In cases attacking rent control as an unconstitutional infringement on the individual's right to contract, courts have answered that "private contract rights must yield to the public welfare, when the latter is

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8. Kahn v. Wall, 68 A.2d 862 (D.C. Mun. App. 1949).
9. Act of Jan. 30, 1942, ch. 26, § 1 *et. seq.*, 56 Stat. 23.
10. Act of June 30, 1947, ch. 163, § 1 *et. seq.*, 61 Stat. 193.
11. Watts v. United States, 161 F.2d 511 (5th Cir. 1947) upheld the constitutionality of the Emergency Price Control Act. Woods v. Miller, 333 U.S. 138 (1948) upheld the constitutionality of the Housing and Rent Act.
12. The necessity for an emergency was outlined in Warren v. Philadelphia, 387 Pa. 362, 127 A.2d 703 (1956) where the Supreme Court of Pennsylvania restated its definition of an emergency as "a sudden or unexpected event which creates a temporary dangerous condition usually necessitating immediate or quick action. . . .", and said that "[o]rdinary conditions or customarily existing conditions are not emergencies. . . ." *Id.* at 366, 127 A.2d at 705. The court had held in the earlier case of Warren v. Philadelphia, 382 Pa. 380, 115 A.2d 218 (1955), that if an emergency existed there was no question that the city had the power to enact an ordinance for rent control. Both cases involved the Philadelphia Rent Control Ordinances of 1955 and 1956. The later *Warren* case struck down the 1956 rent control ordinance because there was no emergency. The evidence showed that the housing problems had been with the city since 1920 so that there was no new emergency to justify enacting the rent control ordinance. The complexion of the Pennsylvania Supreme Court has changed greatly since 1956, and in light of more recent decisions such as the Reitmeyer v. Sprecher, 431 Pa. 284, 243 A.2d 395 (1968), it is highly unlikely that a decision based on the reasoning of the second *Warren* case would be reached today.

If the *Warren* reasoning were argued it could be countered by an argument that the active urban redevelopment and highway construction of the late 1950's and early 1960's has created a new and immediate emergency by the demolition of vast areas of slum housing, thus removing them from the already acute housing market. The emergency has been rendered more difficult by landlords who choose to board up housing that could be rehabilitated, thus removing it from the housing market. In many instances landlords board up housing to avoid code enforcement and to raise the income derived from their properties either through rents or from sale to urban redevelopment authorities. The slum landlord who owns several properties is well aware of the low vacancy rate. He realizes that, if he removes housing from the already short market, he can charge more rent for the properties he keeps available. By removing some properties from use, he also decreases his expenditures of upkeep giving him a higher profit ratio to his current expenses per property.

13. See note 11 *supra.*

appropriately declared and defined and the two conflict."[14] The same reasoning has been applied in upholding rent receivership legislation which is closely related to Pennsylvania's Rent Withholding Law.[15]

COMPARISON BETWEEN PENNSYLVANIA'S ACT AND THE ACTS OF OTHER STATES

In recent years, many states have turned their attention to the problem of enforcing housing codes and have increasingly used the method of withholding rent from landlords who are in violation of the codes. Rent control statutes generally fall into three categories: (1) *Rent Withholding*—establishing some form of escrow arrangement or receivership for the collection of rent;[16] (2) *Rent Abatement*—precluding the collection of rent by the landlord;[17] and (3) *Repair and Deduct*—permitting the tenant to repair premises and deduct the costs thereof from his rent.[18]

The statutes of Illinois[19] and Connecticut[20] are of the rent withholding type. A receiver to collect the rents and expend the funds for repairs is appointed upon the application of the local inspection agency. The Illinois statute gives the landlord four defenses to actions taken under the act: (1) the code violation does not exist; (2) the violation has been remedied or removed; (3) the violation has been and continues to be caused by the current occupants of the building; (4) the occupants of the building have refused entry to the landlord precluding him from repairing the violation.[21] The Illinois statute further provides that no action of eviction, abatement of nuisance, forcible entry and detainer or other similar proceeding shall be threatened or instituted against the occupant solely because such occupant agrees to testify or testifies at a code violation hearing.[22] The Connecticut statute provides that the

14. People v. LaFetra, 230 N.Y. 429, 448, 130 N.E. 601, 607-08 (1921).
15. Ten West 28th St. Realty Corp. v. Moerdler, 52 Misc. 2d 109, 275 N.Y.S.2d 144 (1966).
16. CONN. GEN. STAT., tit. IV, § 19-347b (1965); ILL. STAT. ANN., tit. 24, § 11-31-2 (1961); MICH. COMP. LAWS ANN., § 125.530 (Supp. 1969); PA. STAT. ANN., tit. 35, § 1700-01 (Supp. 1969).
17. N.Y. MULTIPLE DWELLING LAW § 302-a (McKinney 1965). *See also* MASS. STAT. ANN., ch. 239, § 8A (1966); Simmons, *Passion and Prudence: Rent Withholding Under New York's Spiegal Law*, 15 BUFFALO L. REV. 572 (1966).
18. MICH. COMP. LAWS ANN., § 125.534(5) (Supp. 1969).
19. ILL. STAT. ANN., tit. 24, § 11-31-2 (1961).
20. CONN. GEN. STAT., tit. IV, § 19-347b (1965).
21. ILL. STAT. ANN., tit. 24, § 11-31-2 (1961).
22. *Id.*

application of the rule to show cause why a receiver should not be appointed should take precedence over any other business of its court of common pleas.[23] The Illinois and Connecticut statutes require court action to appoint a receiver. In this way they differ from the Pennsylvania act. Also under the Illinois and Connecticut statutes rents collected by the receiver can only be used for the repair of the dwelling. Under the Pennsylvania act funds may be returned to the tenant if improvements are not made within a six month period.

The statutes of New York[24] and Massachusetts[25] have rent abatement provisions whereby no rent shall be recovered by the landlord for the premises. In New York the owner has six months to repair the premises before the rent abatement provision takes effect.[26] After the expiration of the six month period, if the landlord brings an action for the recovery of rent, the tenant must affirmatively plead and prove the defenses of the act and deposit the amount sought to be recovered with the clerk of the court until final disposition of the action.[27] The deposit of rent under the New York statute shall vitiate any right on the part of the owner to terminate the lease because of nonpayment of rent.[28] New York recognizes the same four landlord defenses as are enumerated in the Illinois statute.[29] In Massachusetts there shall be no recovery for rents if the premises are in violation and if the violation will endanger the health or safety of the occupant.[30] If a tenant claims the defense of the Massachusetts statute, the court may require him to deposit the rents due with the court.[31] The New York and Massachusetts statutes are stronger than Pennsylvania's act in that the New York and Massachusetts tenants may retain the rents if they successfully prove the defense of the statutes.

Michigan has repair and deduct provisions in its rent control legislation.[32] The Michigan statute is more comprehensive than Pennsylvania's act since it has provisions for rent withholding,[33] for appointment of a receiver,[34] for repair and deduction of cost

23. CONN. GEN. STAT., tit. IV, § 19-347b(c) (1965).
24. N.Y. MULTIPLE DWELLING LAW § 302-a 3.a (McKinney 1965).
25. MASS. STAT. ANN., ch. 239, § 8A (1966).
26. N.Y. MULTIPLE DWELLING LAW, § 302-a 3.a (McKinney 1965).
27. *Id.*
28. *Id.*
29. *Id.*
30. MASS. STAT. ANN., ch. 239, § 8A (1966).
31. *Id.*
32. MICH. COMP. LAWS ANN., § 125.530 (Supp. 1969). There is a companion statute that provides that the tenant of an "untenantable building" may surrender possession of the premises without liability for rent if the destruction or injury to the premises occurred without his fault or neglect. MICH. COMP. LAWS ANN., § 554.201 (1967).
33. MICH. COMP. LAWS ANN., § 125.530(4) (Supp. 1969).
34. *Id.* § 125.535.

of repair by the tenant[35] and for a cause of action by the tenant against the landlord for damages.[36] The rent withholding provisions are effective after receipt by the landlord of notice that the property is in violation of the statute.[37] The funds so withheld are then payable to the landlord, if he repairs, or to the person authorized to make the repairs, if the landlord fails to repair.[38] The tenant can repair and deduct the cost only if he has the sanction of a court order.[39] In many ways the Michigan statute is broader and more effective than Pennsylvania's act since its flexibility allows additional remedies which may be chosen to fit the facts of the situation involved.

The statutes which require court action in the appointment of receivers are less desirable than the ones in which such appointments are handled primarily as an administrative function of a local agency. A truly effective act is one that is self enforcing. So long as the due process rights of the parties are protected, as they are in the operation of Pennsylvania's act, recourse to the courts should be reserved until final determination by the inspection agency. Pennsylvania's act, in spite of its brevity, operates smoothly and effectively to produce the desired result of obtaining the necessary repairs of the premises involved.

Practical Problems and Possible Solutions

The passage of Pennsylvania's Rent Withholding Law resulted from an awareness of the plight of the slum dweller.[40] The slum

35. *Id.* § 125.534(5).
36. *Id.* § 125.536.
37. *Id.* § 125.530(3).
38. *Id.* § 125.530(4).
39. *Id.* § 125.534(5).
40. The awareness of an acute housing problem has also had an impact on other areas of the law, such as negligence. *See, e.g.*, Reitmeyer v. Sprecher, 431 Pa. 284, 243 A.2d 395 (1968) where the Supreme Court of Pennsylvania held a landlord liable to a tenant for personal injuries sustained by the tenant as a result of a defective condition of the premises which the landlord had promised to repair. The court wrote:

> We must recognize the fact that . . . critical changes have taken place economically and socially. Aware of such changes, we must realize further that most frequently today the average prospective tenant vis-a-vis the prospective landlord occupies a disadvantageous position. Stark necessity very often forces a tenant into occupancy of premises far from desirable and in a defective state of repair. The acute housing shortage mandates that the average prospective tenant accede to the demands of the prospective landlord as to conditions of rental, which, under ordinary conditions with housing available, the average tenant would not and should not accept.

Id. at 289, 243 A.2d at 398.

dweller is faced with a shortage of available housing which makes the housing market a seller's market in which the slum landlord is required to do little in the form of upkeep to attract tenants.[41] The tenant is faced with signing a form lease which is virtually an adhesion contract in which he surrenders most of his rights and remedies. The slum tenant has no bargaining power and the traditional concepts of "offer and acceptance" and "meeting of the minds" have no meaning.[42] The common law of the landlord-tenant relationship which was based on the concept of an agrarian society has little meaning to the slum tenant who merely wants to rent a piece of space on a floor of a multi-tenant dwelling.[43] More often than not that piece of space is inadequate in size, dilapidated in condition, lacking in proper plumbing, heating and lighting facilities and high in cost.[44] Not only is the slum dweller affected by the economics of the situation, but also the so-called average tenant is likewise affected to a more subtle degree.

The practical effects from enforcement of the Rent Withholding Law raise interesting problems. The landlord is not pleased with the act since it forces him to spend money to repair his unfit premises or forfeit rent if he refuses to repair. He is inclined to look upon the tenant as a "stool pigeon" for reporting to the local agency and requesting inspection. He may be further inclined to take positive action in retaliation against the tenant, which he may attempt in several forms and at any time.[45]

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41. Krumholz, *Rent Withholding as an Aid to Housing Code Enforcement*, 5 THE JOURNAL OF HOUSING 242-45 (1968). In Pittsburgh " . . . the most recent vacancy survey in 1965 revealed a vacancy rate of 2.2 per cent." *Id.* at 244. SUB-COMMITTEE OF THE CODE ENFORCEMENT ADVISORY COMMITTEE OF PITTSBURGH, PA., REPORT ON HOUSING FOR LOW INCOME FAMILIES IN PITTSBURGH (1969). The report commenced with the statement:

> There is a definite shortage of housing in the City of Pittsburgh, and particularly a real dearth of standard housing for low income families. For several years the effective vacancy rate, according to the Advance Mortgage Corporation, has been no more than 2%. A substantial portion of the available vacancies have been in newly constructed high-priced apartments.

Id. at 1.

42. Reitmeyer v. Sprecher, 431 Pa. 284, 243 A.2d 395 (1968):

> No longer does the average prospective tenant occupy a free bargaining status and no longer do the average landlord-to-be and tenant-to-be negotiate a lease on an "arm's length" basis. Premises which, under normal circumstances, would be completely unattractive for rental are now, by necessity, at a premium. If our law is to keep in tune with our times we must recognize the present day inferior position of the average tenant vis-a-vis the landlord when it comes to negotiating a lease.

Id. at 290, 243 A.2d at 298.

43. 1 A. CASNER, AMERICAN LAW OF PROPERTY §3.78 (1952).

44. *See* Krumholz, *Rent Withholding as an Aid to Housing Code Enforcement*, 5 THE JOURNAL OF HOUSING 242 (1968).

45. The landlord may distrain the tenant's property, utilize the warrant of attorney and confession of judgment clauses in a written lease, appear before a justice of the peace or magistrate and obtain a money judgment or a writ of possession. He may also shut off the utilities to the premises. Although these acts may be countered legally, the counter

Since a program of code enforcement historically has been costly and slow moving,[46] the real effectiveness of this law is achieved through the tenant individually requesting an inspection by the local agency. In order for the tenant to be free to do this, public policy dictates that there must be protection from the weapons traditionally stacked in the hands of the landlord. The act itself is designed to prevent the forced relocation of the tenant. There is a built-in anomaly in the act in that the property is declared "unfit for human habitation" yet it provides for permitting the tenant to remain in possession of the premises and pay his rent into a rent escrow account. It is clear the act contemplates that the property, although it may be unfit or substandard, is capable of being rehabilitated, and, so long as it does not endanger the health and safety of the tenant and the community, it may be used as a dwelling.

It is submitted that the concept "unfit for human habitation" was intended to embrace deficiencies considerably less severe than

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measures are time consuming, to the obvious detriment of the tenant. The landlord's most frequently used weapon of retaliatory eviction is discussed later in this article. See text accompanying notes 44-47 *infra*.

46. *See* Krumholz, *Rent Withholding as an Aid to Housing Code Enforcement*, 5 THE JOURNAL OF HOUSING (1968):

> Programmed, systematic code enforcement in Pittsburgh begins with a three-year program, detailed in advance. The target areas for concentrated code enforcement and rent withholding are decided by the code enforcement advisory committee with the advice of the Pittsburgh City Planning Department. Six neighborhoods were chosen for systematic inspection, at a rate of two a year from 1967 through 1969. Target areas were selected according to the following criteria:
> —Areas were predominately residential and programmed for residential use in the long-range land use plan.
> —In quality, all units in the areas ranged between 20 and 50 per cent substandard, with less than 20 per cent of the total being classified as dilapidated.
> —Areas were predominately rental rather than owner-occupied.
> —Areas were neighborhoods with a strong sense of community. They abutted other areas where large-scale public investment for redevelopment or neighborhood improvements were taking place.
> —The anticipated displacement load was considered within workable limits.
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> With the target areas identified by the committee, inspectors moved in on a structure-by-structure basis. They represent two departments, the Pittsburgh Bureau of Building Inspection, which is responsible for structural conditions and zoning conformance, and the Allegheny County Health Department, which evaluates conditions relevant to the health of the tenant.

Id. at 243. However, where a concentrated program of code enforcement is in operation, the results have been swift. Some evidence of this can be found in the fact that, according to the bureau of building inspection, the number of building permits issued for repairs in the City of Pittsburgh has quadrupled in the last three years.

the deficiencies that must exist before a dwelling is condemned and ordered vacated under present practice. This in turn contemplates degrees of unfitness, one for the purpose of the rent escrow program and another for the purpose of condemnation and vacation. It necessarily follows that the legislative intent encompasses the idea that the rent withholding procedures should be invoked before a dwelling has deteriorated to the point of being unfit for human habitation within the meaning of the existing condemnation legislation. As a result there are three basic classifications of deficiencies: (1) only minor repair and still fit for human habitation; (2) major repair and unfit for human habitation (rent withholding invoked); or (3) imminent hazard so as to render it unfit for human habitation and hence tenants directed to move out immediately (condemnation and vacation).[47]

The apparent inconsistency in permitting the tenants to remain in property designated as unfit for human habitation was included in the act for very practical reasons. With the housing shortage as acute as it is in the slum areas,[48] this alternative is far less harsh than a relocation to the streets. Relocation by the local agencies takes time, and it may be several months before suitable housing can be found by the tenants themselves.[49]

Public policy further dictates that the landlord, once his property has been certified unfit for human habitation, should not be permitted to relet the premises to another tenant if the present tenant surrenders possession for any reason. Basis for such a prohibition can be found in the act, since "tenant" is used in the singular form and the law mentions the continued occupancy by the tenant. Although the act should not operate to deprive the landlord of his rents entirely without giving him a chance to bring his property up to fit standards, the ability of the landlord to circumvent the act by reletting the premises to a tenant who is unaware that the property is certified as unfit dictates that the landlord's right to relet should be curtailed. It is submitted that one solution would be a provision in the act itself that the landlord shall not relet the premises. Another solution would be to place the burden upon the landlord to apply to the local agency for permission to relet and further to supply the local agency with the name of the new tenant. The new tenant would be notified immediately and supplied with a rent escrow account and the

47. Pittsburgh, Pa., Revised Rent Withholding Procedure Pursuant to Act No. 536, January 24, 1966.

48. See note 41 *supra*.

49. During the period of time in which National Council of Mechanics v. Roberson, 214 Pa. Super. 9, 248 A.2d 861 (1969), was being litigated, the Robersons, a family of six, continued to search for a suitable dwelling to which they could relocate. It took approximately seven months before such a place became available, and, even after such a lengthy search, they were compelled to accept a dwelling with a rental cost of ten dollars a month in excess of what they felt they could afford.

operation of the law would continue. Also, the local agency could be given the right to placard the property and to obtain injunctions against the landlord to prevent him from reletting the premises.[50]

The question of when a tenant is entitled to the protection of this act raises several problems, the greatest of which is the interpretation of the phrase "while rent is deposited into escrow." Clearly the tenant qualifies for the protection of this act while he is depositing rent in escrow. The difficulty begins when this phrase is applied in a given factual situation. Should it mean that so long as the tenant makes one payment into escrow and misses the rest he is entitled to the law's protection? An interpretation such as this would obviously distort the intent of the law. To apply the other extreme of requiring the tenant to pay on or before the date stated in the lease agreement may be equally absurd. The majority of the people being protected by this law are low income or welfare recipients. Low income families are often paid on a weekly basis and welfare recipients receive their checks bi-monthly. As a result these individuals often spread their rent payments over the monthly period and any lease agreement is, in reality, orally modified to comply with the tenant's ability to pay. If there is no oral modification, an estoppel argument can be raised by showing a course of conduct on the part of the landlord in accepting the rent payments after the due date. As a matter of public policy, as long as the tenant pays the month's rent into the escrow account within a month from its due date, he is current with his rent payments and should be entitled to the protection of this act. If the tenant fails to pay the month's rent into the escrow account within this time period, there may be equitable arguments that can be raised in defense to his failure to comply.[51] If the

50. There is a right for the health department to placard a property that is in violation of the health code. ALLEGHENY CO., PA. HEALTH CODE, art. VI, § 616. The requirements for such placarding are, however, more stringent than those that qualify a property for rent withholding.

51. In National Council of Mechanics v. Roberson, 214 Pa. Super. 9, 248 A.2d 861 (1969), these equitable arguments were raised by the defendant. The Robersons originally took possession of the premises on October 1, 1967 subject to a written form 40 lease which specified a monthly rental of sixty-five dollars due in advance on the first day of each month. Prior to invoking the Rent Withholding Law, they paid their rent to the landlord's agent as follows: twenty-five dollars on September 26, 1967, forty-five dollars on October 13, 1967, sixty-five dollars on November 10, 1967, sixty-five dollars on approximately December 10, 1967 and sixty-five dollars on January 26, 1968. All of the foregoing rent payments were accepted without question by the landlord's agent.

It was argued that the lease was orally modified and an estoppel arose barring the landlord from evicting the Robersons for late pay-

tenant is successful in asserting the equities of his situation and makes reasonable attempts to comply as specified by the court, he should remain entitled to the protection of this act.

No provision in the Rent Withholding Law is made to cover the situation where the tenant actively destroys or damages the premises, actively prevents the landlord from making repairs, or makes use of the property for illegal purposes. Clearly if the tenant has actively and intentionally damaged the premises or uses the property for illegal purposes, he should lose protection of the act. This would be sufficient cause for the landlord to evict the tenant notwithstanding this act.[52] It would be against public policy to permit the situation to exist where the tenant could use this law to protect himself from repercussions arising from committing tortious acts against the landlord. It would likewise be undesirable to permit the tenant to prevent the landlord from repairing the premises by refusing to permit his entry to make repairs when the landlord reasonably requests entry for that purpose. If the Rent Withholding Law is amended in the near future, a declaration of policy could be included to cover such wrongful tenant situations. It would not be wise, however, to cover these situations in the act itself, as that would open every case to the allegation that the tenant has committed wrongful acts, and the landlord's greater financial resources would permit litigation of such allegations.[53]

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ment of rent. The equities of the situation were that Mr. Roberson was out of work and refused to register for welfare benefits. He had returned to work shortly after the eviction notice was received in June, 1968, and he intended to pay the two months of overdue rent. He did make up the overdue rent to the rent escrow account by August 20, 1968, and thereafter remained current. During the period of time in which the property was under rent withholding, the landlord made little reasonable effort to repair.

The estoppel argument was based upon the following cases: Universal Builders Supply v. Shaler Highlands Corp., 409 Pa. 334, 186 A.2d 30 (1962); Deviney v. Lynch, 372 Pa. 570, 94 A.2d 578 (1953); Weinberg v. Morgan, 186 Pa. Super. 322, 192 A.2d 310 (1958); and Lettieri v. School District, 4 D. & C.2d 177 (C.P. Lack. 1956).

It was further argued that although the Robersons may presumably have lost the protection of the Rent Withholding Act by being two months overdue in their payments, the equities of their situation entitled them to the continued protection of the act. At least they were entitled to a hearing on the merits which was not granted by the lower court. This issue was never reached nor discussed by the Pennsylvania Superior Court. The case should have been remanded for a hearing on the merits; however, since the Robersons were eventually successful in finding a place to relocate, it was not necessary to pursue further appeals.

52. In spite of the provision in the act that "no tenant shall be evicted for any reason whatsoever while rent is deposited in escrow," PA. STAT. ANN. tit. 35, § 1700-01 (Supp. 1969), the avowed policy of the act to never provide protection for acts of the tenants that are contrary to the criminal laws of the Commonwealth of Pennsylvania should permit the eviction.

53. This subject was discussed in a study of possible amendments to the Rent Withholding Law made by Neighborhood Legal Services of Pittsburgh, Community Legal Services of Philadelphia, and the City and County Law Departments for Pittsburgh and Allegheny County. It was

Although the act does not presently cover situations in which the tenant is a wrongdoer, there is nothing in the act which would prevent consideration of such facts as a component of the local agency's decision in certifying the property as fit or unfit. The local agency has complete discretion to make fit or unfit certifications. Furthermore, the landlord retains his legal remedies to cover situations involving wrongful tenants.

Retaliatory measures taken by the landlord cannot be tolerated since such steps would contravene the operation of the act. Retaliatory measures fall into three basic categories: (1) eviction or termination of the lease, (2) raising of the rents, or (3) acts such as shutting off utilities or distraining tenant's property. The most common measure involves retaliatory eviction of the tenant because he invoked this act by reporting code violations to the local agency.[54] The act states that the tenant shall not be evicted for any reason whatsoever while depositing the rent into the rent escrow account. From this it is clear that the tenant should be

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unanimously agreed that a provision causing the tenant to lose the protection of the act if he causes a violation would be a poor solution to the problem. It would permit the landlord with his greater financial resources to utilize confession of judgment to obtain quick judgments, the appeals from which are costly and arduous for the tenant with few financial resources. Furthermore, it would place the burden of proof on the tenant to open a judgment when the burden should be on the landlord to assert the cause of action.

54. Edwards v. Habib, 397 F.2d 687 (D.C. Cir. 1968). This case was an appeal from a refusal to open judgment to permit the tenant to enter the defense that the landlord was evicting her in retaliation for her complaint of housing code violations. The court of appeals held that the judgment should be opened to permit this defense which, if proved, would be a successful defense to the eviction proceedings.

> But while the landlord may evict for any legal reason or for no reason at all, he is not, we hold, free to evict in retaliation for his tenant's report of housing code violations to the authorities. As a matter of statutory construction and for reasons of public policy, such an eviction cannot be permitted.
>
> The housing and sanitary codes, especially in light of Congress' explicit direction for their enactment, indicate a strong and pervasive congressional concern to secure for the city's slum dwellers decent, or at least safe and sanitary places to live. Effective implementation and enforcement of the codes obviously depend in part on private initiative in the reporting of violations. . . . To permit retaliatory evictions, then, would clearly frustrate the effectiveness of the housing code as a means of upgrading the quality of housing in Washington.
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> . . . . In light of the appalling condition and shortage of housing in Washington, the expense of moving, the inequality of bargaining power between tenant and landlord, and the social and economic importance of assuring at least minimum standards in housing conditions, we do not hesitate to declare that retaliatory evictions cannot be tolerated.

Id. at 699-701.

protected while the property is under certification and the tenant is complying with the act by tendering the rent to the escrow agent.[55] However, many attempts to retaliate occur subsequent to the time when the property is certified as fit. The public policy of this act must extend to cover any subsequent retaliations on the part of the landlord. The touchstone of this concept is to encourage tenants to cooperate with the local agencies by reporting violations. The tenant must not only be protected from retaliatory eviction while the property is certified as unfit, but also for the time beyond when the certification of unfitness has been withdrawn.

The greatest practical problem that arises on the part of the tenant and the tenant's attorney is that of proof that an eviction is retaliatory. Traditionally, the landlord may evict a tenant for any reason or without reason so long as he complies with the provisions of the lease and the law.[56] The tenant has the burden of proof and must show that the landlord lacked any cause to evict him, thus implying that eviction was attempted for retaliatory reasons. The only real solution to this dilemma is to create a rebuttable presumption in favor of the tenant that an eviction is retaliatory when attempted at any time during the period of certification and for a specified period of time after the certification has been withdrawn.[57] The presumption can then be rebutted by the landlord's showing of good cause or sufficient reason for the eviction.

The Operation of the Act in Allegheny County[58]

Allegheny County is chosen as an example of the practical operation of the Rent Withholding Law. The law has been in effect in Allegheny County since 1966 and has been developed into a smooth and effective rent control device. The operation of the Rent Withholding Law is normally invoked either as a result of programmed code enforcement or upon the complaint of the individual tenant. The local enforcement agencies in Allegheny County are the Pittsburgh Bureau of Building Inspection and the Allegheny County Health Department. By mutual agreement the health department assumes the responsibility of processing the escrow accounts; the escrow agent is Mellon National Bank and

55. National Council of Mechanics v. Roberson, 214 Pa. Super. 9, 249 A.2d 328 (1969). (concurring opinion). It is submitted that this act was the correct answer to the case as far as it went. The case should have been remanded for a full hearing on the merits, the equities of which may have excused the tenants and continued their protection under the act.

56. Pa. Stat. Ann., tit. 68, § 250.501 *et. seq.* (1968).

57. It is suggested that a one year period of time be used subsequent to the date of the last certification of the property as unfit for human habitation, during which the presumption of retaliatory eviction would operate.

58. Information for this portion was obtained through discussion with Cyril A. Fox, Jr., Esq., Second Assistant City Solicitor of Pittsburgh, and James V. Voss, Esq., of the Allegheny County Law Department.

Trust Company. Also by agreement, a system of cross inspection has been developed. When either agency inspects a property, it notifies the other which also inspects the same property. There is nothing, however, to prevent the inspectors of either agency from placing a dwelling into rent withholding when they find qualifying defects.

The bureau of building inspection is concerned primarily with structural defects of buildings. The nature and seriousness of the defect places it in one of the three categories previously mentioned: (1) minor repairs and still fit for habitation, (2) major repairs and unfit for habitation—rent withholding, and (3) imminent hazard so as to require immediate relocation of the tenants and condemnation of the building.[59] Each type of defect has been placed in one of these three categories. Specific defects or combinations of defects as specified by the inspector's guidelines may qualify the property for rent withholding. If the inspector determines from his inspection that the property should be eligible for rent withholding, he certifies it as "unfit for human habitation," and both the landlord and the tenant are notified of the certification and the basis for it. If a party is aggrieved by the building inspector's certification, he must petition for an appeal to the court of common pleas.[60] The bureau of building inspection holds no hearings concerning this matter, and any appeals are heard de novo by the court of common pleas. If the premises qualify for rent withholding, the tenant is directed to the Allegheny County Health Department to receive his escrow account number. All matters concerning the processing of the account and the disposition of the funds are handled by the health department.

The health department is concerned primarily with the health and safety of persons occupying the premises and other premises in the neighborhood. The health department's procedure differs from the bureau's in that a specific point scale is used in determining whether a property should be certified for rent withholding. The health inspector notes each violation upon his inspection of the premises. Each violation is assigned a designated number of points and the points are then totaled. If the total exceeds twenty but is less than fifty, the property is certified as "unfit for human habitation" and is eligible for rent withholding. If the total exceeds fifty, the tenants are eligible for relocation services

59. Pittsburgh, Pa., Revised Rent Withholding Procedure Pursuant to Act No. 536, January 24, 1966.

60. PA. STAT. ANN., tit. 53, § 25094 (1957). The petition for appeal must be filed within thirty days.

in addition to rent withholding. If the inspector determines that the continued occupancy of a dwelling constitutes a danger to the tenants, he may order immediate relocation of the tenants and the boarding up of the property regardless of the total points involved. Both the landlord and the tenant are notified of the results of the inspection and the basis of the certification. If the property is certified as "unfit" the tenant is directed to the health department to receive his escrow account number. Unlike the procedure before the bureau of building inspection, if a party feels aggrieved by the certification, he may request and receive a hearing at the health department.

If the property is certified as "unfit" by either or both agencies, the landlord must make all of the stated repairs before the property can be certified as "fit." As a result of the mandatory language of the act, there is no middle ground.[61] The act places a six month limitation upon the certification, and the property is inspected as a matter of course at the expiration of the six month period. If any of the violations cited in the inspection which disqualified the property are found to exist, the property is recertified as "unfit" and the tenant can continue to pay his rent into the escrow account.[62] If at this inspection any more vio-

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61. PA. STAT. ANN., tit. 35, § 1700-01 (Supp. 1969). The act uses the mandatory language that if the property is not certified as "fit" at the expiration of the six month period, the funds in the escrow account "shall" be returned to the depositor-tenant. As a result of this mandatory language and the public policy that the act is penal in nature, it makes no difference if the tenant is delinquent in his rent payments as regards the disposition of the funds in the escrow account. The landlord's sole remedy is to evict the tenant pursuant to Pennsylvania's Rules of Civil Procedure, Rule 1051 *et. seq.* Pa. R. Civ. P. 1051.

62. National Council of Mechanics v. Roberson, 214 Pa. Super. 9, 248 A.2d 861 (1969), discussed the protection of the tenant from eviction during the six month period. *Roberson* held that after the six month period the tenant would not be entitled to protection under the act. However, the opinion, as indicated by Judge Hoffman's concurring opinion, very wisely does not consider nor limit the number of six month periods that may be used. In the *Roberson* case it was unclear whether the property was certified at the expiration of the first six month period or not. There was an inspection, but no specific certification. The result in *Roberson* was unexpected because the six month point was not briefed, argued or raised by inference before the superior court. However, since the certification is the basis for the operation of the act, it is a logical and reasonable requirement that a certification of "unfit" be required at the expiration of a six month period to enable a new six month period to go into operation. The new certification, if done within a reasonable time, can be made effective in such a way that there is no hiatus in the withholding procedure. The problem raised by *Roberson* is easily disposed of by certifying a building "unfit" as a result of inspection at the expiration of the six month period. The new certification will automatically initiate another six month period. A contrary result contravenes the policy behind the act, for the purpose is to compel the repair of the premises. To permit the landlord to escape sanctions under the act after the six month period defeats this purpose. Furthermore, as a result of the low vacancy or availability rate of housing (two per cent) it would be unconscionable to strip the tenant of his protection at the end of six months. The acute

lations are found to exist, they are added to the old ones and all violations must be repaired before the property can be certified as "fit." Even though the landlord has expended some money, or money in excess of the amount held in escrow for repairs, if all the repairs are not completed, the property is certified as "unfit" and the depositor-tenant gets the money back at the expiration of the six month period.[63] This interpretation may work some hardship on an individual landlord; however, it is the only interpretation which insures complete performance by the landlord.

There is a difference of opinion between the bureau and the health department as to when the six month period of rent withholding commences. Both agencies agree that the protection of the act commences on the date of certification; however, they are not in agreement as to the date from which the landlord's duty to repair commences. The bureau's interpretation is that the six months for the landlord to repair starts on the date that the notice of certification is mailed. The health department believes that the landlord's six months begins on the date that he actually receives notice of certification. Provided there is a minimum of red tape, the notice of certification is usually sent to the landlord within two weeks of the date of certification. The only sensible solution to this problem is, therefore, that the time period for withholding rent and the time period within which the landlord must repair should run concurrently from the date of the certification.[64] The act is clear that as soon as the property is certified

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housing shortage will not improve in six months time, and an interpretation that only one six month period is provided by the act constitutes a naive disregard of this practical fact.

63. National Council v. Allegheny County Health Dep't., No. 2647 (C.P. Allegheny County, Pa., April Term 1969); Klein v. Allegheny County Health Dep't., No. 2705 (C.P. Allegheny County, Pa., April Term 1969). Both cases involved appeals by the landlord from the decision of the director of the health department to return the escrow funds to the tenants. It was admitted that the landlords expended monies in excess of the funds deposited in the escrow accounts and that the properties were still certified as "unfit" since all of the citied violations were not repaired. By order of court dated April 2, 1969, the court returned all funds in the escrow accounts to the respective tenants. Both cases are presently on appeal to the Pennsylvania Superior Court at No. 218 April Term, 1969 and No. 219 April Term, 1969, respectively.

64. Starr v. Mike Cassidy and Associates, No. 373 (Small Claims, C.P. Allegheny County, Pa., 1969). This case involved an appeal from the decision of the director of the health department to return the escrow funds to the landlord. The issue raised was whether the six month period in which the landlord was to repair ran from the date of certification or the date the landlord received notice of the certification. Many other ramifications of this case resulted in a settlement prior to a judicial determination.

as "unfit," the duty of the tenant to pay rent and the right of the landlord to collect rent are suspended for six months. An administrative delay of longer than two weeks should toll the operation of the act for all parties so that their rights are fully protected.

If the landlord completes the repairs within the six month period, he may request an inspection of the premises and another certification. Upon the certification, notice is sent to the landlord and the tenant giving them ten days within which to request a hearing by the health department. If no hearing is requested before the director of the health department or his representative, the funds in the escrow account are disbursed in accordance with the certification. If a hearing is requested, one is held to determine whether the certification was proper. The landlord or the tenant has ten days from the date of this decision during which the funds remain in the escrow account pending the filing of an appeal. If no appeal is filed, the funds are disbursed accordingly.

A problem results in the disbursement of funds from accounts involving multi-tenant dwellings. This problem has been resolved in a very practical manner. If the landlord has repaired all the violations in one unit and not in another, he receives the escrow funds from that tenant whose unit he has fully repaired. The funds from the escrow account of the tenant whose unit has not been fully repaired are returned to that tenant. This problem is unique with the health department for if there are structural deficiencies resulting in the bureau's certification, they usually affect all the tenants, and when a structural defect is repaired, the certification can be lifted for all building residents. Should the problem arise with a bureau certification, it would probably be handled in a manner similar to the health department procedure.

There are two instances under the Rent Withholding Law which permit disbursement of funds prior to the date of a "fit" certification, or the expiration of the six month period. Both instances are covered in the provision of the act which states: ". . . any funds deposited in escrow may be used, for the purpose of making such dwelling fit for human habitation and for the payment of utility services for which the landlord is obligated but which he refuses or is unable to pay."[65] The intent behind this provision is to keep the act from operating to the detriment of the tenant by denying funds to the landlord and thereby preventing him from paying for necessary repairs or utilities.

The landlord can obtain funds from the escrow account by filing a rule to show cause on the tenant and the health department to receive money to pay specific bills as long as the procedure is

65. PA. STAT. ANN. tit. 35, § 1700-01 (Supp. 1969).

completed before the expiration of the six month period. The tenant can obtain the use of the funds in the same manner. The health department can repair and obtain the escrow money, but has not chosen to do so. A mortgagee desiring to make the necessary repairs and obtain escrow funds should protect himself by first obtaining a written release from the landlord since the act specifies that the funds are payable to the "landlord" and makes no provision for repairs by a mortgagee. There is nothing in the act to prohibit the tenant from voluntarily releasing the fund to the landlord for the purpose of making repairs.[66] The tenant may, therefore, apparently use the operation of the act to place himself in a better bargaining position for obtaining the necessary repairs. Since the purpose of the act is to encourage the speedy repair of the property, it would be thwarting this purpose to enable the landlord to drag out the repairs over a period of time by merely doing such repairs as would be financially covered by the funds in the escrow account.

As stated in the act, funds may also be released from the escrow account for the purpose of paying utility expenses for which the landlord is obligated but refuses to pay. To implement this portion of the act, an informal working arrangement has developed in Allegheny County whereby the utility companies check with the health department prior to terminating services either by request or by reason of nonpayment. If the services are for a property under rent withholding, and it is the landlord's obligation to pay for utilities, the health department so advises the utility company and further advises them whether there are sufficient funds available in the escrow account to cover the utility payments. The utility company then bills the health department and payment is made from the escrow account involved so that utility service may be continued without interruption.

If the tenant should surrender possession of the premises during the rent withholding period, the operation of the act continues and the funds deposited in the escrow account remain there until the expiration of the six month period or until the property is certified as "fit." If the landlord fails to repair within six months, the funds in the escrow account are returned to the depositor-tenant.

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66. *Id.* The act talks of "duty" of the tenant and "right" of the landlord. The act does not use mandatory words in enabling the tenant to withhold rent. If the rent is withheld, it "shall" be deposited in the escrow account; however, the tenant may continue payments to the landlord if a mutual agreement on the repairs is reached.

As indicated previously at the expiration of the six month period, a reinspection is made and the property is certified as "fit" or "unfit." Notice of the certification is sent to both the landlord and the tenant, and the aggrieved party may request a hearing before the director of the health department. If no hearing is requested within ten days, the funds are disbursed to the appropriate party. The hearing before the health department is held to determine if the certification is proper, and disposition is made accordingly to either the landlord or the tenant. The health department holds the escrow funds for ten days pending the taking of an appeal by an aggrieved party.

The actual course of administrative review is to appeal the certification to the director of the health department. From the health department decision appeal can be taken to the Allegheny County Board of Health and from there to the Allegheny County Commissioners. After the decision of the county commissioners, administrative review is complete and appeal is to the courts.

The practice in Allegheny County has been to deviate from the actual course of administrative review. The procedure utilized is to pursue appeals from the determination of the director of the health department directly to the court of common pleas by filing on the Allegheny County Health Department a rule to show cause why the funds should not be returned to the party aggrieved.[67] In this appeal route the party who gained the favorable decision by the health department is an indispensable party-defendant to the rule to show cause and must be named in the pleadings.[68] A full hearing de novo raising all issues can then be held on the merits of the case. After disposition further appeals can be taken through the appellate courts.[69]

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67. Since there is no formal appeal route specified in the act, local practice should be followed. In Allegheny County there has been some confusion as to which division of the court of common pleas the appeal should be taken. The confusion has been caused by the change in court structure resulting from the new Pennsylvania constitution. Since this is an appeal from a determination of the health department that the certification was correct, the proper route for appeal is to the court of common pleas, civil division and not to the small claims division. Practically all of these appeals involve a question of law as applied to facts which are stipulated by the parties. It would be erroneous to submit these appeals to an arbitration board in small claims, because this procedure would result in the necessity of educating the constantly changing arbitration board on a law which is little known to them.

68. In the National Council of Mechanics v. Roberson, 214 Pa. Super. 9, 248 A.2d 861 (1969) the original petition was filed naming only the Allegheny County Health Department as the defendant. No notification was sent to the Robersons, the tenants of the premises. By circumstance, counsel for the Robersons learned of the hearing, appeared and orally requested leave to intervene the Robersons as parties-defendants to the action. Leave was granted. Since the rule to show cause is, in reality, an appeal, notice to the tenants or the landlord is a necessity.

69. PA. STAT. ANN., tit. 17, § 184 (Supp. 1969). Since the amount in

Notwithstanding the established practice in Allegheny County, the recently passed Local Agency Law[70] should be utilized as the vehicle for the appeals of the decisions of the health department. The health department qualifies as a local agency[71] and the appeal is to be made directly to the court of common pleas.[72] If no formal record of the hearing is kept by the health department, the appeal would be heard de novo.[73] If a formal record of the proceedings is made before the health department, the appeal is treated similar to a certiorari.[74] Further appeal from the court of common pleas is provided to the superior court.[75]

Throughout the procedures as set up in Allegheny County, the due process rights of all parties are protected. Both the city and county have very wisely refrained from enacting ordinances or regulations to restrict the development of the procedure under this act. If such a codification of procedure is required by an appellate court in the future, it can easily be accomplished.

CONCLUSION

Pennsylvania's Rent Withholding Law is no paragon of legislation; however, it can work effectively. In spite of the faults that can be found in the act, it is achieving a great deal of social good in obtaining the upgrading of many slum properties in areas where the act is in operation.

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controversy is virtually always less than ten thousand dollars in these cases, the appeal would be to the superior court.

70. PA. STAT. ANN., tit. 53, § 11301-11 (Supp. 1969) (An act implementing the provisions of section 9 of Article V of the Constitution of the Commonwealth of Pennsylvania by providing for a right of appeal in all cases from adjudications of administrative agencies of political subdivisions; and providing for the practice and procedure before said agencies).

There is no problem in utilizing the Local Agency Law for appeals involving certifications made by the health department. However, the health department has no control or jurisdiction over the bureau of buildings, and any certification made by the bureau would have to follow the appeal route specified in PA. STAT. ANN. tit. 53, § 25094 (1957). A provision should be made to make the certification of the bureau reviewable by the health department, giving them jurisdiction over the bureau's certification for the purposes of the final hearing so that the Local Agency Law could apply uniformly to both certifications.

71. PA. STAT. ANN., tit. 53, § 11302 (Supp. 1969).

72. *Id.* § 11307.

73. *Id.* § 11308(a).

74. *Id.* § 11308(b). The health department keeps tape recordings of their hearings, making it a simple matter to provide for the transcription of the testimony if an appeal is taken. The net result is a reduction in the number of appeals to the court of common pleas.

75. *Id.* § 11309.

Perhaps the greatest value of the Rent Withholding Act is in its use as a bargaining tool. The act gives the tenant a bargaining power he never had before. It presents an opportunity for the slum tenant to feel that he has done something to upgrade himself without having it handed to him. In many of the efforts to upgrade the living standards in the slums, sight is often lost of the fact that in order to retain the good that is achieved, a sense of responsibility must be developed on the part of the slum dweller. There is no better way to do this than to give the bargaining tool to the tenant and assist him in making the agreement. The tenant's attorney should encourage his client to strike a bargain where one can be made.

Pennsylvania's Rent Withholding Law, in spite of its shortcomings, can achieve much good in enabling individuals and the communities to take positive action themselves to create better living conditions in the slums or ghettos.[76] It further permits a tangible illustration of the local agencies' efforts to cooperate with the slum dwellers to assist them in upgrading the communities and combating the "urban crisis."[77] For these reasons the act is of tremendous value to all of Pennsylvania.

76. "One of the most difficult and controversial problems we have encountered relates to ghetto demands for 'self-determination' or 'community control.'" *Report of the National Advisory Committee on Civil Disorders*, U.S. Gov't Printing Office, 0-291-729 at 153 (1968).

77. Tangible results are the upgraded properties, serving to combat the problem of the credibility gap between the slum dwellers and the public officials. *Id.* at 147.